IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-616

HOLLYWOOD, INC., a Florida corporation,
Petitioner,

vs.

CITY OF HOLLYWOOD, a municipal corporation of Florida,
Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS PETITION FOR CERTIORARI

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Agreeable to Rule 24, Petitioner submits this Supplemental Brief.

I.

All the parties are in accord as a consequence of the decision of the Supreme Court of Florida in

Hollywood, Inc. vs. City of Hollywood,
321 So. 2. 65,
Decided April 23, 1975,
Rehearing Den. November 18, 1975,
Reversing

Fourth District Court of Appeal of Florida
Reported 283 So.2d 581,
Decided 25 September 1973
Rehearing Den. October 23, 1973,

which left the case without any trial—without any evidence before the Court, and without any Judgment. In short, it left the case in the pleading stage. Within season and in appropriate manner, Hollywood, Inc., sought to file a supplemental answer. This was in conformity with Rule 1.190(d), which is in substance the same as Federal Rule 15(d). It permits a litigant to file

> "* * * a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented."

The expression,

> "* * * transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented,"

is identical with the language used in Federal Rule 15(d).

To the application of Hollywood, Inc., to file such supplemental pleading, the Respondent, City of Hollywood, filed no written response, reply or objection. The Florida Courts refused to allow Hollywood, Inc., to file such supplemental pleading. The record therefore does not disclose the reasons activating the Court in denying the application to file the supplemental pleading. Such judicial action is in and of itself standing all alone a denial of Due Process of Law to Hollywood, Inc.

Donald Lindsey vs. Dorothea M. Normet, 405 US 56, 31 L.Ed. 2d 36, at page 46, 92 Sup.Ct. 1972.

> "'*Due process requires that there be an opportunity to present every available defense.*' (Citing numerous decisions)"

II.

The first Supplemental Defense which was sought to be asserted (but leave denied) involved the constitutional challenge of the last sentence of Section 40.07 (4), Florida Statutes. We again quote Subparagraph (4) and emphasize the last sentence:

> "40.07 Persons disqualified.—
>
> "(4) BY INTEREST IN THE SUBJECT MATTER OF THE CAUSE.—No person interested in any issue to be tried therein shall be a juror in any cause; *but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state, or such county or municipal corporation.*"

In our original Petition we cited, in support of our challenge of the validity of the statute, the case of

Tumey vs. Ohio,
273 U. S. 510, 47 S.Ct. 437,
71 L.Ed. 742, 50 A.L.R. 1243,
Reversing 115 Ohio St. 701, 155 N.E. 698

That case was decided 50 years ago. Chief Justice Taft, writing for a unanimous Court, came to grips with the precise statute now challenged. He said:

> "*The strict common-law rule was adopted in this country as one to be enforced where nothing but the common law controlled, and citizens and taxpayers have been held incompetent to sit in suits*

against the municipal corporation of which they have been residents. (Citing many cases)" (Emphasis supplied)

71 L.Ed. at 757, 50 A.L.R. at 1252

The latest decision of this Court on this question was rendered in January of this year.

Connally vs. State of Georgia,
—— US ——, 50 L.Ed.2d 444,
97 S. Ct. 546, 45 L.W. 3461,
Decided January 10, 1977,
Reversing the Supreme Court of Georgia,
237 Ga. 203, 227 S.E.2. 352.

III.

The City of Hollywood in its opposition brief contends that the above Statute does not come into operation, for that there are 29 cities within Broward County, Florida. This fact nowhere appears in the record and is completely unsupported by any documentary reference. Such contention by the City of Hollywood can mean only that it concedes that the challenged statute is unconstitutional.

Our principal answer to this contention is to be found in the nature of the complaint of the City of Hollywood and its chief prayer therein. It does not seek a judgment determining that the City is the owner of the locus in quo, but on the contrary this is a prayer of the City on which the case was tried:

"* * * City of Hollywood * * * prays that this Court take jurisdiction of the parties hereto and the subject matter hereof *and find* that Block C, Hollywood Beach, Second Addition, and Block 205, Hollywood Central Beach, *are public property,* and that said property is *exempt from taxation*; * * * ".

The instant litigation was begun on August 14, 1964, more than 13 years ago. Throughout this time and for more than 30 years prior thereto, the locus in quo had been taxed for both county and municipal purposes, the taxes paid by Hollywood, Inc., and its predecessors, and received by Broward County and the City of Hollywood and retained by them.

IV.

The Federal Rules of Civil Procedure went into effect on 16 September 1938. Rule 2 abolished the procedural distinction between Law and Equity. Its language was compressed into one short sentence—

"There shall be one form of action to be known as 'civil action'."

This Rule did not alter the substantive differences between Law and Equity. Florida did not follow suit. It was not until January 1, 1967 (29 years later) that Florida adopted Federal Rule 2, 187 So.2. 598, Rule 1.040,

"Rule 1.040. One Form of Action

"There shall be one form of action to be known as 'civil action'.
"Committee Note: Federal Rule 2."

187 So.2., at 600.

We have seen that the case was begun on August 14, 1964. It was therefore labeled and denominated *"In Chancery"*. When the City of Hollywood filed its complaint seeking the relief as herein described, it labeled its pleading *"In Chancery"*. It was not until after January 1, 1967, that the litigants dropped the label, "In Chancery". The relief sought by the City of Holly-

wood was such as formerly allowed by an Equity Court. The City had 3 prayers in its complaint:

(a) A final judgment determining and adjudicating that the subject property was and constituted "public property" and exempt from taxes.

(b) Cancellation of the sheriff's deeds issued in 1930 consequent upon execution based on final judgments rendered in April, 1929.

(c) An injunction against Hollywood, Inc., from asserting or claiming any title or possessory interest to the subject property.

It should be borne in mind that the City of Hollywood waited for 34 years after the execution sales and sheriff's deeds in 1930 before it began any action in August, 1964, to assert its right to the property.

The nature of the property involved in the case is succinctly stated in the first sentence of the decision of the District Court of Appeal, as follows:

> "(1) This appeal involves conflicting claims of ownership of two blocks of vacant, unimproved, oceanfront beach land (Block C and Block 205)."
>
> 283 So.2. 581, at page 582.

After the Supreme Court of Florida reversed the decision of the District Court of Appeal and determined that the City of Hollywood was entitled to a jury trial—there was no order requiring the parties to recast their pleadings so as to make a jury case out of it. Obviously, since the property was vacant, unimproved and no one in possession—ejectment would not lie. To be sure, jury trials have been permitted in equity cases, but then only in an advisory capacity. At this

juncture of the case it is impossible to determine what issues are to be tried before a jury. When Hollywood, Inc., sought to file its supplemental pleading, it sought to gear its defenses to the decision of the Supreme Court requiring a jury trial, but this was denied. All of this adds to the claim that Hollywood, Inc., was denied Due Process of Law.

Respectfully submitted,

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